

RESOLUTION NO. 2019-38

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AWARDED CONTRACTS TO MT CAUSELY, INC. AND C.A.P. GOVERNMENT, INC. FOR SUPPLEMENTAL BUILDING INSPECTION AND EXAMINATION SERVICES; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 23, 2019, the Village of Key Biscayne (“Village”) issued Request for Proposals No. 2019-01-23 (“RFP”) for supplemental building inspection and examination services (“Services”); and

WHEREAS, the Village received two proposals in response to the RFP; and

WHEREAS, after review and consideration of the proposals submitted in response to the RFP, the Village Manager recommends awarding contracts for the Services to MT Causley, Inc. (“MT Causley”) and C.A.P. Government, Inc. (“C.A.P. Government”), collectively referred to as the “Contractors”, as the lowest responsible and responsive bidders; and

WHEREAS, the Village Council desires to engage Contractors to perform the Services and authorizes the Village Manager to execute agreements with the Contractors in substantially the forms attached hereto as Exhibits “A” and “B” (the “Agreements”); and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Award of Contracts.** That the Contractors are awarded contracts for the Services pursuant to the RFP.

Section 3. **Authorization.** That the Village Manager is authorized to execute the Agreements with the Contractors in substantially the forms attached hereto as Exhibits “A” and “B” and execute any related or necessary documentation on behalf of the Village, subject to approval by the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Implementation.** That the Village Council hereby authorizes the Village Manager to take any and all action which is reasonably necessary to implement the purpose of this Resolution.

Section 5. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 11th day of June, 2019.

ATTEST:


JENNIFER MEDINA, CMC
VILLAGE CLERK


MICHAEL W. DAVEY, MAYOR



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


VILLAGE ATTORNEY

**SERVICES AGREEMENT
BETWEEN
THE VILLAGE OF KEY BISCAYNE
AND
C.A.P. GOVERNMENT, INC.**

THIS AGREEMENT (this "Agreement") is made effective as of the 1st day of July, 2019 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the "Village"), and **C.A.P. GOVERNMENT, INC.**, a Florida profit corporation, whose principal address is 343 Almeria Avenue, Coral Gables, Florida 33134 (hereinafter, the "Contractor").

WHEREAS, on January 23, 2019, the Village issued Request for Proposals No. 2019-01-23 ("RFP") for supplemental building inspection and examination services (the "Services"); and

WHEREAS, in response to the RFP, on March 1, 2019, the Contractor submitted a proposal ("Proposal"), which is incorporated and attached hereto as Exhibit "A," for the Services and was thereafter awarded a contract; and

WHEREAS, the Contractor and Village have, through mutual agreement, agreed upon the rate schedule as set forth in Exhibit "B" (the "Rate Schedule") in connection with the Services; and

WHEREAS, the Village desires to engage the Contractor to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Village agree as follows:

1. Scope of Services.

- 1.1. The Contractor shall furnish the Services, as requested by the Village and detailed in a document, which the Village will provide the Contractor when engaging the Contractor to work on a specific project ("Statement of Work").
- 1.2. Prior to commencement of work on a specific project, the Contractor will provide the Village with a fixed lump sum cost for the Services set forth in the Statement of Work calculated using the rates set forth in the Rate Schedule attached hereto.
- 1.3. If the Village approves the fixed lump sum cost for the project, the Village will provide the Contractor with a notice to perform the Services set forth in the Statement of Work ("Notice to Proceed"). Contractor acknowledges that

it shall not undertake to perform any Services on any project until it has received from the Village the Notice to Proceed on such project.

- 1.4. The Contractor shall furnish all reports, documents, information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables").
- 1.5. The Contractor shall abide by the terms and requirements of the RFP, as though fully set forth herein.

2. Term/Commencement Date.

- 2.1 This Agreement shall remain in effect from the Effective Date and shall remain in effect for thirty-six (36) months thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, the Village Manager may renew this Agreement for two (2) additional one (1) year periods on the same terms as set forth herein upon written notice to the Contractor.
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete the Services within the timeframes set forth in the Statement of Work and the Notice to Proceed for each project in the manner provided in this Agreement, unless extended by the Village Manager.

3. Compensation and Payment.

- 3.1 Compensation for Services provided by Contractor shall be in accordance with the approved fixed lump sum set forth in the Statement of Work or the Notice to Proceed for each project, which shall be based on the Rate Schedule attached hereto.
- 3.3 During each project, Contractor shall deliver an invoice to Village no more often than once per month detailing Services completed and the amount due to Contractor under the Statement of Work for such project. Fees shall be paid in arrears each month, pursuant to Contractor's invoice, which shall be based upon the percentage of work completed for each project. The Village shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager.

4. Subcontractors.

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services and/or any project.

- 4.2 Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Village Manager, which approval shall be granted or withheld in the Village Manager's sole and absolute discretion.

5. Village's Responsibilities.

- 5.1 Village shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Village, and provide criteria requested by Contractor to assist Contractor in performing the Services.
- 5.2 Upon Contractor's request, Village shall reasonably cooperate in arranging access to public information that may be required for Contractor to perform the Services.

6. Contractor's Responsibilities.

- 6.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services for each project as is ordinarily provided by a Contractor under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Village requests, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.
- 6.2 The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village.

7. Conflict of Interest.

- 7.1 To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Village. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied an application, or an administrative appeal or court action wherein the Village is a party.

8. Termination.

- 8.1 The Village Manager, without cause, may terminate this Agreement upon five (5) calendar days written notice to the Contractor, or immediately with cause.
- 8.2 Upon receipt of the Village's written notice of termination, Contractor shall immediately stop work on the project unless directed otherwise by the Village Manager.
- 8.3 In the event of termination by the Village, the Contractor shall be paid for all work accepted by the Village Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4.
- 8.4 The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. Insurance.

- 9.1 Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village as it deems necessary or prudent.
 - a. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

- b. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- c. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- d. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

9.2 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

9.3 **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be

specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

9.4 **Loss Payee.** The Village is to be specifically named as a loss payee under the Contractor's Professional Insurance policy so that the Village will be a third party beneficiary entitled to receive all money payable under the relevant policy for any claims, damages, or losses in connection with, related to, or arising from Contractor's Services or performance pursuant to this Agreement.

9.5 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.6 The provisions of this section shall survive termination of this Agreement.

10. Nondiscrimination.

10.1 During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. Attorneys Fees and Waiver of Jury Trial.

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

12. Indemnification.

12.1 Contractor shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's negligent acts, errors, or omissions arising out of the performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's negligent performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. Notices/Authorized Representatives.

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: Andrea Agha
 Village Manager
 Village of Key Biscayne
 88 West McIntyre Street
 Key Biscayne, FL 33149

With a copy to: Chad Friedman, Esq.
 Village Attorney
 Weiss Serota Helfman Cole & Bierman, P.L.
 2525 Ponce de Leon Blvd., Suite 700
 Coral Gables, FL 33134

For the Contractor: Carlos A. Penin, PE
 President
 C.A.P. Government, Inc.
 343 Almeria Avenue
 Coral Gables, FL 33134

14. Governing Law and Venue.

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. Entire Agreement/Modification/Amendment.

- 15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.
- 15.3 Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

16. Ownership and Access to Records and Audits.

- 16.1 Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Village. Contractor shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2 Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 16.3 Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- 16.4 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 16.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.6 Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 16.7 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE VILLAGE'S CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Jennifer Medina
Mailing address: 88 West McIntyre Street
Key Biscayne, FL 33149
Telephone number: 305-365-5506
Email: jmedina@keybiscayne.fl.gov

17. Nonassignability.

- 17.1 This Agreement shall not be assignable by Contractor unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Contractor, and Contractor's familiarity with the Village's area, circumstances and desires.

18. Severability.

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. Independent Contractor.

19.1 The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. Compliance with Laws.

20.1 The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

21. Waiver.

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. Survival of Provisions.

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. Prohibition of Contingency Fees.

23.1 The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee,

commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. Public Entity Crimes Affidavit.

24.1 Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. Counterparts.

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

FOR THE CONTRACTOR:

C.A.P. Government, Inc., a Florida profit corporation

By: 

Name: Carlos A. Penin

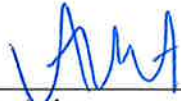
Title: President

Date Executed: 05/30/2019

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

FOR THE VILLAGE:

VILLAGE OF KEY BISCAYNE, a
Florida municipal corporation

By: 
Andrea Agha
Village Manager
Date Executed: July 1, 2019

Attest:

By: 
Jennifer Medina
Village Clerk, CMC



Approved as to Form and Legal Sufficiency:

By: 
Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

EXHIBIT "A"
SCOPE OF SERVICES

The Scope of Services are those contained in Contractor's Proposal dated March 1, 2019, attached hereto and incorporated herein by reference.

**EXHIBIT “B”
RATE SCHEDULE**

The Rate Schedule for Services to be performed pursuant to this Agreement are as follows:

Position	Hourly Rate
Building Official	\$120.00
Plans Examiner (Building, Electrical, Mechanical, and Plumbing)	\$110.00
Plans Examiner (Structural)	\$120.00
Plans Examiner (Zoning)	\$110.00
Plans Examiner (Landscaping)	\$110.00
Inspector (Building, Roofing, Electrical, Mechanical, and Plumbing)	\$85.00
Inspector (Zoning)	\$80.00
Inspector (Landscaping)	\$80.00
Code Enforcement Officer	\$85.00
Public Works Plans Examiner	\$120.00
Public Works Inspector	\$85.00
Fire Plans Examiner	\$110.00
Fire Inspector	\$85.00
Permit Clerk	\$50.00